STATE OF MICHIGAN

COURT OF APPEALS

LANCE N. LEMMEN,

Plaintiff-Appellant/Cross-Appellee,

v

BARBARA LEMMEN,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
February 9, 2010

No. 279832
Ottawa Circuit Court
LC No. 04-048561-DM

LANCE N. LEMMEN,

Plaintiff-Appellant,

v

BARBARA LEMMEN,

Defendant-Appellee.

No. 285241
Ottawa Circuit Court
LC No. 04-048561-DM

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right, and defendant cross-appeals, from a June 11, 2007, judgment of divorce and accompanying property distribution. Plaintiff also appeals by leave granted from a subsequent order modifying his child-support obligation. We affirm.

Plaintiff and defendant married in 1977; they have two children together, one of whom is an adult and one of whom is still a minor but is in her teenage years. In 2004, plaintiff filed for divorce. After lengthy proceedings and a multiple-day bench trial, the trial court ultimately decided to divide the marital estate approximately evenly, and it ordered plaintiff to pay defendant $6,046,794 to effectuate the property division. The court also ordered spousal support and child support, with the spousal support to be terminated upon defendant's receipt of the $6,046,794.

We review a trial court's findings of fact in a divorce case for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if, after a

review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

> If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. [*Sparks*, *supra* at 151-152.]

Plaintiff first argues that the trial court erred in including plaintiff's interest in Admiral Petroleum Holding Company as part of the marital estate. Plaintiff claims that he obtained this asset as a gift and that it therefore did not constitute marital property. The trial court accurately summarized the basic facts regarding Admiral in its May 1, 2007, opinion and order:

> The primary issue in this case is whether or not Admiral Petroleum is part of the marital estate. Plaintiff argues that his Admiral Petroleum stock was gifted to him personally; thus, it is not part of the marital estate. Defendant claims that Admiral Petroleum is a marital asset because it was acquired during the marriage with marital assets.
>
> A brief history of this company and its various names or "shelf" corporations is necessary at this time. In 1986, each of the four Lemmen brothers, Dennis, Doug, Plaintiff and Todd[,] formed Lemmen, Inc. Each brother owned a 25% share of this company. Lemmen, Inc. in turn purchased, as its sole asset, a 50% interest in Admiral Petroleum Holding Company. The sole asset of Admiral Petroleum Holding Company was Admiral Petroleum.
>
> In 1998, Lemmen[,] Inc. purchased the remaining 50% interest in Admiral Petroleum Holding Company. Since Admiral Petroleum Holding Company was the sole asset of Lemmen, Inc., those two corporations merged into Admiral Petroleum with Admiral Petroleum being the surviving corporation.
>
> Plaintiff and his family attempt to portray the initial acquisition of Admiral Petroleum as a "gift" from Wayne [Lemmen] to each of the four sons. In support of this, Plaintiff called Wayne to testify. Wayne testified that in 1986, he had an opportunity to purchase 50% of Admiral Petroleum. Wayne claimed that he did not want to purchase Admiral for himself; rather, he wanted to purchase that business for his four sons, Plaintiff, Dennis, Douglas & Todd. [Footnotes omitted.]

The trial court concluded that even though Wayne and others testified that Admiral had been a gift from Wayne, the documents admitted at trial indicated that each of the four brothers transferred approximately $150,000 to Lemmen, Inc., and that the resulting funds were used to purchase Admiral. The $150,000 was provided to plaintiff as a "bonus" from Lemmen Pontiac & Farm Equipment, Inc., of which plaintiff was an employee. The court concluded that "any testimony that the . . . bonus at the end of 1986 was not a bonus is not credible given the history of six-figure bonuses paid to the brothers at the end of each calendar year . . . ." The court also

noted that, contrary to plaintiff's testimony that he had no idea about the pending acquisition of Admiral, defendant testified that plaintiff had been "excited" about it. The court stated:

> Plaintiff asks this [c]ourt to disregard what was documented in 1986 and 1987. Instead, Plaintiff asks this [c]ourt to believe him and his family based on their memories shrouded by 20 years of history; and, memories that are completely at odds with records that are contemporaneous with the transaction. The [c]ourt rejects this position. In short, Plaintiff has not established that the transaction was a "gift."

The court then added that, even if it were to believe plaintiff's witnesses about the "gift," it would nonetheless conclude that Admiral could not, in actuality, be considered a gift because it was not reported as a gift for tax purposes.

We find no clear error in the trial court's findings. The trial court had the opportunity to observe the demeanor of the witnesses and determine their credibility. *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 274 (2001). "This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses." *Draggoo*, 223 Mich App at 429. The trial court concluded that the testimony indicating that Admiral was a gift was not credible and that it was contradicted by other evidence, including evidence that plaintiff had been an employee of Lemmen Pontiac, that he regularly received year-end bonuses from Lemmen Pontiac, that a Lemmen Pontiac bonus was used to purchase Admiral, that plaintiff had been "excited" about the acquisition of Admiral, and that the purported "gift" was not classified as a gift for tax purposes. Under these circumstances, we are not left with a "definite and firm conviction that a mistake has been made" concerning the classification of Admiral. *Id*.

Plaintiff takes issue with the fact that the trial court denied defendant's motion for a directed verdict on this issue and then found for defendant, even though the only additional evidence presented was defendant's testimony that plaintiff had been "excited" about the acquisition of Admiral. However, the trial court was within its rights to determine that, viewing the evidence in the light most favorable to plaintiff, see *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), an issue of fact existed and to then *resolve that issue of fact* in favor of defendant. No error is apparent.

Plaintiff also contends that the fact that the transfer of Admiral was not classified as a gift for tax purposes is not controlling, citing *In re Handelsman*, 266 Mich App 433, 438; 702 NW2d 641 (2005). *Handelsman* concerned whether a party had been given the gift of receiving certain rents, and the Court noted that the failure to file gift tax returns was not controlling. *Id*. at 438. However, *Watling v Watling*, 127 Mich App 624; 339 NW2d 505 (1983), cited by defendant and by the trial court, is the analogous case here. In *Watling*, 127 Mich App at 629, the Court considered whether certain bank accounts had been gifts to the divorcing parties' children. The Court stated:

> Defendant's testimony that these accounts were never intended to be gifts would normally preclude the beneficial tax savings under [a revenue ruling relating to accounts held by minor children].

> But justice requires us to estop a party from making such a claim. If the evidence on remand shows that defendant claimed tax savings on his income tax forms because of these savings accounts, he will not be heard to argue (absent proof that he has filed an amended return) that he never really intended them as gifts if the applicable statute or ruling in fact requires such an intent. *We will not allow a party to claim a benefit at divorce if he is in effect arguing that he has defrauded the government*. [Emphasis added.]

Watling is controlling here and provides additional support for the trial court's ruling.

Plaintiff next argues that, even if Admiral is considered a gift, it should have been excluded from the marital estate because "both the acquisition of the interest and any increase in value have been of a purely passive nature on [plaintiff's] part." This argument is unavailing. As noted in *Byington v Byington*, 224 Mich App 103, 112; 586 NW2d 141 (1997), "property earned by one spouse during the existence of a marriage is presumed to be marital property." Here, plaintiff acquired Admiral using his "earnings," and he continually served on the board of directors for Admiral and was a vice president of the company. The company needed its board of directors and its vice presidents to function properly. It is disingenuous for plaintiff to argue that the acquisition and appreciation of Admiral was "purely passive."

Plaintiff next argues that his interest in Lemmen Transportation, Inc., was not marital property. The entirety of plaintiff's argument is the following: "The facts as established clearly show the same analysis applies and [the] same result is mandated as to Plaintiff's interest in Lemmen Transportation, Inc., based upon the authorities cited herein." We decline to address this issue because of inadequate briefing. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 499; 668 NW2d 402 (2003). In the "statement of facts" portion of his appellate brief, plaintiff does indicate that Lemmen Transportation was a "gift" and cites to the record. However, the cites show only that plaintiff testified that Lemmen Transportation was "a gift to me," without further elaboration. The trial court concluded that plaintiff's credibility on this issue was questionable and that "Plaintiff failed to establish who, if anyone, gave him this gift." Under these circumstances, we would find no basis for a reversal or remand even if we were to review this issue.

Plaintiff next argues that the trial court erred in excluding the testimony of Neil DeBoer, plaintiff's valuation expert, from consideration. We review the trial court's exclusion of evidence for an abuse of discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005).

DeBoer, a certified public accountant, calculated the value of plaintiff's 25 percent interest in Admiral as $5,527,000.[1] Defendant moved before trial to exclude DeBoer's testimony as unreliable, and the trial court deferred its ruling until after DeBoer testified at trial. DeBoer explained that, in order to value plaintiff's interest, he used the "Build-Up Method" and a discount rate based on Ibbotson data and applied it to the projected dividend stream. Before trial,

[1] The trial court ultimately valued plaintiff's interest as $10,985,318.

defendant had submitted an affidavit by Gary Trugman, a business-valuation witness, that doing so was flawed because the discount rate should be applied to "net cash flow," not to "estimated actual dividends at the shareholder level."[2]

At trial, DeBoer admitted that, in a pretrial affidavit, he stated that the "'Build Up Method using Ibbotson data generally applies to net cash flow at the entity level.'" DeBoer responded "I guess that's correct" when defendant' attorney stated the following: "My question is[,] you've recognized what you've identified as the 'general rule,' and you, you basically don't see a rule that says you can't do it, you can apply it to a dividend stream, and so you did[.]" Defendant's attorney then impeached DeBoer with texts and treatises that supported applying the discount rate based on Ibbotson data to net cash flow and did *not* support the method employed by DeBoer. Evidence was produced that if dividends were used in making a valuation, then a different source from that employed by DeBoer would be used for the discount rate. Moreover, Trugman testified at trial and clearly testified that DeBoer's valuation method was not the product of reliable principles and methodology. Erick Adamy, defendant's valuation expert, agreed.

The trial court rejected DeBoer's valuation evidence, stating, in part:

> The [c]ourt relies primarily upon the expert testimony of Gary Trugman as supplemented by Adamy in coming to this conclusion. Trugman is perhaps THE most qualified and respected business evaluator in that profession. Trugman literally wrote the book on business valuation. Trugman testified, and the [c]ourt accepts as true, that the method used by DeBoer is simply wrong and without any support in the business valuation community. Adamy supported Trugman's analysis.

We find no abuse of discretion with regard to the trial court's ruling. MRE 702 states:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Here, there was ample evidence that DeBoer's valuation was *not* the "product of reliable principles and methods . . . ." Reversal is unwarranted.

Plaintiff contends that the trial court should not have accepted the valuation of Adamy.[3] He contends that Adamy's valuation was inherently not credible because he did not apply "lack

[2] Using the net cash flow would result in a much larger number than using dividend distributions.

of control" (LOC) and "lack of marketability" (LOM) discounts to plaintiff's interest in Admiral, despite having applied such discounts three years prior in valuing plaintiff's brother's interest in Admiral. We disagree with plaintiff's assertion of error. First, the question of credibility was for the trial court. *Draggoo*, 223 Mich App at 429. Second, that Adamy did not apply LOC and LOM discounts did not serve to invalidate the remainder of his valuation; the trial court was not obligated to either accept or reject the entirety of Adamy's valuation. In fact, as discussed below, the trial court decided to apply, in this case, the same LOC and LOM discounts that Adamy used in valuing the brother's interest in 2001. Reversal is unwarranted.

Plaintiff next argues that the trial court should have applied greater LOC and LOM discounts to plaintiff's interest in Admiral. He states "it is both appropriate and commensurate with the facts of this case to add an additional 15% to each of the two discount prongs." Plaintiff's cites no portion of the record and no authority in support of this argument. Accordingly, we decline to address it. As noted in *Wiley*, 257 Mich App at 499, "[a]n appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position."

Plaintiff next argues that the trial court erred in including as part of the marital estate the value of a home plaintiff purchased during the proceedings. We disagree. As noted by the trial court in its opinion, plaintiff purchased the home using marital assets; accordingly, its value was properly included as part of the marital estate. "[P]roperty earned by one spouse during the existence of a marriage is presumed to be marital property." *Byington*, 224 Mich App at 112. We find no clear error.

Plaintiff similarly argues that the trial court erred in including as part of the marital estate a 2004 joint tax refund that plaintiff applied toward his 2005 tax obligation. Again, we disagree. This money was marital property, and the trial court did not commit clear error in including it as part of the marital estate.[4] Nor did the court clearly err in awarding $63,000 to defendant based on improvements plaintiff conducted on his home. The court stated the following:

> In addition, the court will award Defendant $63,000 due to Plaintiff's improper use of marital funds to improve the property on Lloyd's Bayou. While Plaintiff put $80,000 into improvements, the value of the home increased by only $17,000. As such, the [c]ourt concludes that Plaintiff wasted marital assets.

The improvements did not serve to proportionally raise the value of the home, and the trial court was within its rights to conclude that plaintiff had essentially "wasted" marital assets by way of the improvements.

(…continued)

[3] The court accepted Adamy's, as opposed to DeBoer's, inherent valuation of plaintiff's interest in Admiral; Adamy reached a greater number than DeBoer. The court then, however, chose to apply to Adamy's inherent valuation certain discounts that Adamy had applied in 2001 in valuing plaintiff's brother's interest in Admiral.

[4] The court stated, "It cannot be disputed that this [the tax refund] was a marital asset."

Plaintiff next contends that the trial court erroneously concluded that plaintiff owned 20 percent of Lemmen Transportation, Inc., when defendant admitted that plaintiff only owned 8.3 percent of it. Plaintiff states that an attorney's admissions at trial are binding. However, plaintiff cites to no portion of the record indicating that defendant's attorney made such an admission; instead, the evidence came in through witnesses. The court stated the following with regard to Lemmen Transportation:

> The [c]ourt determines that Lemmen Transportation, Inc. is a part of the marital estate. There is conflicting evidence as to the percentage of stock owned by Plaintiff. Both experts testified that Plaintiff owned 8.3% of the stock. But joint exhibit #4 contains stock certificates showing that Plaintiff owned 20% of the stock. As such, this exhibit is persuasive. Accepting the testimony of Adamy, the [c]ourt determines that the value of Lemmen Transportation is $368,000. Plaintiff's 20% interest in this company is valued at $73,600.

Given that there was support in the record for the trial court's finding, and given the trial court's role of assessing credibility, we find no clear error.

Plaintiff argues that the trial court made two mathematical errors in its apportionment of the estate. The court deducted $249,899 from the marital estate for the parties' 2003 tax liability. Plaintiff argues that "the trial court should . . . have deducted the entire tax liability . . . from its calculation of the gross marital estate," but this is exactly what the trial court did, apportioning a *negative* $124,949.50 to *each* of the parties. Plaintiff's argument is without merit. Plaintiff also argues that the trial court erred in awarding defendant the sum of $63,000 for the "waste" discussed above; he contends that defendant should have received only half of this amount. However, the court explicitly stated that it was awarding defendant the *entire sum* of $63,000 due to defendant's wasteful actions. There were no mathematical errors as alleged by plaintiff.

Defendant next argues that the trial court erred in enforcing an attorney-fee arrangement entered into by the parties.

The original attorney-fee arrangement was contained in a stipulated temporary order entered in May 2004. It stated:

> On a monthly basis, the Plaintiff shall pay to attorneys for the Defendant the equivalent of the fee incurred/charged by his attorney on behalf of the Plaintiff regardless of whether or not the Plaintiff pays his monthly attorney fees. This provision shall include all monies paid to the Plaintiff's attorney, for any and all issues regarding this litigation including, but not limited to, monies paid to the Plaintiff's attorney prior to filing of the Complaint for Divorce and the retainer. The Plaintiff shall bring current the attorney fees within five (5) days of the entry of this order and he shall pay future attorney fees as set forth herein on the 15th of each month payable to Rhoades McKee. The issue of additional attorney fees is reserved.

This arrangement was modified by a January 2006 order stating:

> Consistent with the Temporary Order, the Defendant's attorney shall receive the equivalent of the fee charged by the Plaintiff's attorney, whether that amount is paid hourly as was anticipated by the Temporary Order or in a lump sum payment or payments consistent with the current fee arrangement between the Plaintiff and his current attorney.

Plaintiff contends that the entry and enforcement of these orders were prohibited because the orders violated public policy and because there was no consideration for a contract concerning attorney fees. Plaintiff's appellate argument is unavailing, however, because it is moot. Indeed, the trial court reversed course and awarded plaintiff a credit for the attorney fees paid. See *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003) (discussing mootness).

Plaintiff next argues that the trial court erred in ordering him to pay defendant $6,046,794 within 60 days of entry of the judgment. Plaintiff contends that he has no ability to do so because he does not have sufficient control over Admiral such that he could obtain that amount of cash. Plaintiff states that complying with the order would result in his "impoverishment." However, the evidence revealed that plaintiff receives well over $1,000,000 a year from Admiral, that he owns a $680,000 debt-free home, and that, of course, he retains a 25 percent interest in Admiral. With these assets it is disingenuous for him to argue that he could not manage to pay the judgment.[5] We find no basis on which to reverse the trial court's ruling.

Plaintiff next argues that the trial court erred in modifying the child-support order and setting child support at $9,835 a month. We review this issue for an abuse of discretion. *Burba v Burba*, 461 Mich 637, 647; 610 NW2d 873 (2000). Child support was set initially at $3,750 a month, in accordance with the parties' stipulation. Defendant moved to increase this amount. The court, on November 19, 2007, indicated that, in its judgment of divorce, it had not intended to deviate from the child-support guidelines but had inadvertently "simply ordered the prior stipulated child support amount." The court concluded that a review of the child-support amount was warranted and that "[i]t was not this [c]ourt's intent to deviate from the child support guidelines." A circuit court referee on January 22, 2008, indicated that support in accordance with the guidelines was appropriate and that plaintiff should have made arguments concerning deviation from the guidelines at the November 19, 2007, hearing. Plaintiff objected to the referee's order and another hearing took place. The trial court stated:

> I'm going to follow the referee's recommendation as far as the number crunching goes, those are the numbers, I don't think there's really a dispute regarding that. Mr. Haslem argues that there should be a deviation from the guidelines, that was addressed on November 19th, that argument today is more properly formed or called a motion for reconsideration, I'm glad both parties are here to address that. I'm not going to deviate from the guidelines; I think the guidelines are appropriate. I understand Mr. Haslem's position that Ms. Lemmen

[5] Moreover, his spousal support obligation will terminate upon his satisfaction of the property distribution.

> presented a budget at trial and also at the November 19 hearing that was less than $9,000 a month. But I also believe that during the course of this marriage the parties did not have a lavish lifestyle but coincidently [sic] upon Mr. Lemmen's separation and divorce suddenly he seems to have had a large stream of income flowing his way that he is now using. It would seem to be appropriate that the child['s] standard of living should be able to increase significantly as has Mr. Lemmen's standard of living. He now – I believe he is living in a $600,000 house on Lloyds Bayou, the marital home which I'm sure was a nice home, but I suspect it wasn't near as lavish as that. So, he has increased his standard of living, there is no reason why the minor child cannot increase her standard of living and it should be a pretty good standard of living. As far as the trust goes, I'm going to deny that, I'm not going to deviate from the guidelines.[6]

Even assuming that plaintiff was not dilatory in raising the issue surrounding deviation from the guidelines, we find no basis for reversal. MCL 552.519(3)(a)(*vi*) indicates that the child support formula is to be based on "the needs of the child *and the actual resources of each parent*" (emphasis added). Use of the formula is mandatory. See *Burba*, 461 Mich at 643.

MCL 552.605(2) states:

> Except as otherwise provided in this section, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:
>
> (a) The child support amount determined by application of the child support formula.
>
> (b) How the child support order deviates from the child support formula.
>
> (c) The value of property or other support awarded instead of the payment of child support, if applicable.
>
> (d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

Plaintiff relies primarily on *Kalter v Kalter*, 155 Mich App 99; 399 NW2d 455 (1986), in support of his argument that the court should have deviated from the guidelines. In *Kalter*, 155 Mich App at 104, the Court stated that "guidelines and percentages used without limitation are

[6] We note that the parties engaged in additional legal maneuvering and appeals concerning child support, but that maneuvering is not at issue in the present appeal.

unrealistic and unfair when both parents have substantial incomes." It stated that "all any parent should be required to pay, regardless of his or her ability, is a fair share of the amount actually necessary to maintain the child in a reasonable standard of living." *Id*. *Kalter*, however, was issued before the current legislative guidelines became mandatory, and we therefore do not consider it dispositive in the present case. Under the current law, "[t]he court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate." Given plaintiff's large income, and given that the guidelines incorporate both the child's needs *and* the resources of the parents, we cannot conclude that the trial court abused its discretion in failing to conclude that following the guidelines would be unjust or inappropriate in this case. The court did not abuse its discretion in failing to deviate from the guidelines or in failing to impose a so-called "good fortune trust" to benefit the minor child.[7]

Plaintiff next argues that this case should be assigned to a different judge. Although we are not remanding this case to the trial court by way of the instant opinion, we will address this argument nevertheless, in case any issues such as, for example, a motion to modify the child support order, should arise. We find that plaintiff's complaints against the trial judge amount to nothing more than a disagreement with the trial court's rulings. "Repeated rulings against a litigant, even if erroneous, are not grounds for disqualification. The court must form an opinion as to the merits of the matters before it. This opinion, whether pro or con, cannot constitute bias or prejudice." *Band v Livonia Associates*, 176 Mich App 95, 118; 439 NW2d 285 (1989). We find no evidence of bias or prejudice in the record and no evidence that "the original judge would have difficulty in putting aside previously expressed views or findings . . . ." *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004). Plaintiff's appellate argument is without merit.

On cross-appeal, defendant argues that the trial court erred in applying LOC and LOM discounts to plaintiff's interest in Admiral. The trial court noted that Adamy had used a LOC discount of 25 percent and a LOM discount of 30% in valuing plaintiff's brother's interest in 2001. The trial court stated, in part:

> Adamy testified during cross examination that the discount figures that he used in 2001 were based on his professional judgment. The [c]ourt notes that a discount could be anywhere from 1% to 99%. Adamy chose discounts of 25% and 30%. Having already concluded that Adamy's credibility is sound, the [c]ourt concludes that the discounts used in 2001 are appropriate to use for the 2005 valuation.

We find no clear error in the trial court's valuation of plaintiff's interest, given that it was based on the testimony of an expert witness. "A trial court has great latitude in determining the value of stock in closely held corporations, and where a trial court's valuation of a marital asset is

[7] A "good fortune trust" would allow "excess" support amounts to be placed into a trust account for the benefit of the child. We note that plaintiff cites no binding authorities in support of his contention that a "good fortune trust" should have been imposed.

within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). While defendant argues that LOC and LOM discounts should not apply here, she cites no binding authorities for that proposition. Accordingly, she has failed to persuade us that the trial court erred in applying the discounts.

Defendant also argues that the trial court, at the very least, should not have applied LOM discounts to the liquid assets of Admiral and to the money held in an "accumulated adjustment account" (AAA) because they were available and marketable. Defendant's argument is unpersuasive. First, there was evidence that the money in the AAA account, although taxed to plaintiff and defendant because of the way the corporation was set up, was still an asset of the company and not yet plaintiff's individual property. Second, there was evidence that the liquid assets were in place to further the goals and address the needs of the company. The trial court did not clearly err in applying the LOM discount.

Defendant next argues that the trial court erred in crediting plaintiff with the attorney fees he paid under the stipulated order discussed earlier.[8] Defendant contends that the trial court unlawfully dismantled the parties' contract. We review for an abuse of discretion a trial court's award of attorney fees in a divorce action. *Heike v Heike*, 198 Mich App 289, 294; 497 NW2d 220 (1993).

We find no abuse of discretion here. As noted in *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005), a valid contract requires consideration. Defendant argues that the consideration for the attorney-fee arrangement was that plaintiff retained "the benefit of having paid a lesser amount in child support and spousal support than otherwise would be required . . . ." However, there is no evidence that this was the "bargain" that was struck; it is not evident from the contract itself. Moreover, the trial court subsequently raised the amount of child support and also indicated that spousal support will be terminated after plaintiff completes payment of the property distribution. Defendant's "consideration" argument is without merit, and we find no error in the trial court's decision to disallow enforcement of the attorney-fee contract. Moreover, given the property distribution and spousal support orders, defendant did not need to obtain further money from plaintiff in order to continue defending the case. This fact was abundantly clear and did not require further input during a hearing. To the extent that MCR 3.207(C)(3) requires a hearing in order to modify a temporary order, the lack of such a hearing in this case was harmless.

Defendant lastly contends that the trial court should have granted a greater amount of child support. The trial court did so, and therefore this issue is moot. *In re Contempt of Dudzinski*, 257 Mich App at 112.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto

[8] It is unclear why the trial court "reversed course" and decided to disallow enforcement of the stipulated order.